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MAY 26 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of  
  
The Telephone Consumer  
Protection Act of 1991

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) CC Docket No. 92-90  
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To: The Commission

COMMENTS OF THE  
UTILITIES TELECOMMUNICATIONS COUNCIL

Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) rules, the Utilities Telecommunications Council (UTC) respectfully submits its comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM), FCC 92-176, released May 26, 1992. The NPRM proposes regulations to implement the Telephone Consumer Protection Act of 1991 (TCPA). The regulations contain prohibitions, with certain exceptions, on the use of automatic telephone dialing systems, termed autodialers, to conduct telemarketing operations.

UTC is the national representative on communications matter for the nation's electric, gas, water, and steam utilities. Approximately 2,000 utilities are members of UTC. They range in size from large utilities, combining electric, gas and water distribution and serving millions of customers, to smaller, rural electric cooperatives and water districts serving only a few thousand customers. UTC's primary objective is to protect the

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ability of utilities to operate the reliable and secure telecommunications facilities which assist them in carrying out their service obligations to the public.

#### Utility Uses of Autodialer Systems

Each utility in the country is responsible for providing electric, gas or water service -- or a combination thereof -- to thousands or millions of individual residences and businesses. There are many types of situations in which a utility would best serve its customers by notifying as many people as possible, as quickly as possible, regarding an emergency or maintenance problem, for example. To accomplish this task, autodialing systems are often used because they reach more customers at a faster rate than could be achieved using live personnel.

Specific uses of autodialing systems include provision of automated callback to customers to verify service restoration, advance notification of scheduled service outages necessary to perform maintenance, updates on the status of service outages and confirmation of service restoration, notification in serious situations to employees that they are needed on the job as soon as possible, and to assist with account reconciliation.

A type of autodialing system is also used to perform remote meter reading, which allows utilities to read utility meters via phone lines and eliminates the need for personnel to individually

visit homes to accomplish the same task. Although system designs vary, the basic concept involves an automated call from the utility to specialized customer premises equipment which uploads usage data to the utility, and/or which receives pricing information from the utility if the utility employs variable pricing. Such "autodialer" meter reading systems usually operate without any customer interaction, and are designed to "free" the telephone line if the customer initiates a call during the data transfer. Advanced automatic meter reading systems can also perform demand-side management functions, thereby helping to conserve energy and limit the need for new electrical generating capacity.

#### Utility Exemption

Given the large number of beneficial uses for autodialers by utilities, UTC requests the FCC to specifically exempt utility calls from the prohibitions of its autodialer regulations. Since, as explained below, utility uses of autodialers already fall under a number of the FCC's proposed exemptions, the most effective and understandable drafting of autodialer regulations would include an outright exemption for public utilities. Indeed, the legislative history to the TCPA clearly indicates that autodialer calls by public utilities are to be exempt as a form of "emergency" calls.<sup>1/</sup> For example, UTC suggests that

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<sup>1/</sup> 137 Cong. Rec. H11310 (November 26, 1991)(statement of Rep. Edward Markey).

proposed Section 64.1100(c) be revised to add the following exception to the definition of "telephone call":

64.1100(c)

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- (5) that is made by an electric, gas or water utility.

#### Proposed FCC Exemptions

As an alternative to creating a utility autodialer exemption, UTC suggests the FCC specifically name utility calls when describing both (1) exemptions for non-commercial autodialer uses; and (2) exemptions for commercial calls which will not adversely affect privacy rights and which do not include the transmission of any unsolicited advertisement. UTC supports the imposition of both types of exemptions. Utility activities could be interpreted to fall under either of these categories. While utilities do receive revenue for their provision of service to the public, and could be found to be commercial organizations, most of the autodialer calls made by utilities are for non-commercial purposes, generally related to health and public safety needs. Other types of calls may be interpreted to be commercial in nature, such as debt collection calls or meter reading uses. However, utility commercial calls do not affect privacy rights because they relate in one form or another to the provision of requested service to the consumer. Nor do utility calls include the transmission of unsolicited advertisements.

UTC also supports the exemption for autodialer calls to former or existing clientele. If there is a prior or existing business relationship with the the called party, UTC supports an exemption for calls under a "preexisting business relationship" exemption. This would apply only to past or current business relationships. UTC recommends the FCC not describe "business relationship" as requiring a "voluntary" two-way communication between the caller and the customer. The term "voluntary" is ambiguous and the parties to calls could easily differ on their interpretations of the nature of their relationship.<sup>2/</sup> However, UTC supports the idea that a prior one-way solicitation by the caller to the called party would not, standing alone, qualify as a prior business relationship.

Even though debt collection actions would appear to be included under the exemption for preexisting business relationships, UTC recommends that the FCC specifically create an exemption for debt collection which outlines the type of practices which are acceptable under the exemption. As noted above, since the proposed regulations are rather broad and subject to interpretation, it would facilitate implementation and

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<sup>2/</sup> For example, businesses providing essential services, such as hospitals or public utilities, clearly have a "business relationship" with their customers, but it is debatable whether all customers would consider the relationship "voluntary." Nevertheless, autodialer calls from hospitals or utilities would clearly be intended to fall within the scope of a business relationship exemption.

enforcement efforts if the FCC would expressly define, where possible, categories of exemptions for clearly permissible activities. UTC suggests for inclusion a debt collection exemption as follows:

64.1100(c)

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(6) that is made for the purpose of debt reminder or collection.

UTC supports an exemption for autodialer calls made for emergency purposes concerning public health and safety interests. UTC agrees that many utility uses of autodialers, particularly those regarding power outages, would could fall into this category. However, UTC reiterates that it would be a better approach to simply adopt an all-encompassing exemption for utility use of autodialers, generally.

#### Prohibitions On Autodialer Solicitations To Businesses

The TCPA expressly prohibits autodialer calls to emergency telephone lines, whether medical or fire or police-oriented in nature; to telephone lines of health care or elderly care facilities; or to telephone numbers assigned to radio services, such as cellular, where the called party is charged for the call. The FCC requests comment on whether the privacy concerns of businesses are protected by these provisions. UTC urges the FCC to also include a restriction on use of autodialers to utility phone systems, including both to emergency lines and regular

business lines. Automated equipment has been used to sequentially dial every direct inward dial (DID) extension in some utilities, resulting in every phone ringing in sequence until answered. When large numbers of personnel are absent, secretarial personnel are burdened with answering large numbers of automated calls. Similarly, utility dispatch personnel often use consoles to which blocks of DID numbers are programmed. The sequential dialing patterns of automated dialing equipment necessitate the dispatcher answering each call. Should a disruption of this type occur during an electrical outage, for example, the health and safety interests of the public would be jeopardized, because important communications could not occur between customers and the utility and among utility personnel. UTC therefore recommends that proposed Section 64.1100(a)(1)(i) be amended as follows:

64.1100(a)(1)(i)

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To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, fire protection or law enforcement agency, or public service utility company;

UTC further recommends that proposed Section 64.1100(a)(4) be revised to prohibit the sequential blocking of telephone lines in a business:

64.1100(a)(4)

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Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously, or in succession.

Methods To Restrict Telephone Solicitation  
To Residential Customers

The FCC requests comment on methods to protect residential customers from telephone solicitations. One possibility would be to create a national database listing numbers of residential subscribers who object to telephone solicitations. UTC would support such a database if its operation were found to be practicable and if businesses were also included on the list of numbers not to be called by telemarketers.<sup>3/</sup> UTC questions, however, whether there would be sufficient privacy for consumers and businesses if the list were widely available to private entities.

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<sup>3/</sup> While Section 227(c) of the TCPA directs that a rulemaking specifically consider the privacy needs of residential telephone subscribers, Section 227(b)(2) also directs the FCC to consider regulations on how businesses may avoid receiving unwanted calls.



UTC would not advocate use of a special prefix for all telemarketers which would enable callers to screen out telephone solicitations. There is no method for the FCC to enforce the use of a prefix by telemarketers, since not every party choosing to engage in telemarketing would voluntarily and promptly obtain a telemarketer phone prefix. UTC would prefer that the FCC use special directory markings to indicate telephone service subscribers who do not wish to receive telephone solicitations. UTC would not advocate mandating the maintenance of industry-specific "do not call" lists because it would be extremely difficult for the FCC to enforce their establishment or use.

UTC supports implementation of time of day restrictions on telemarketing to between 9:00 a.m. and 9:00 p.m. In addition, UTC recommends the FCC limit to twice a year the number of times a telemarketer can call a specific household.

### Conclusion

UTC urges the FCC to establish an exemption for all utility calls to the prohibitions on use of autodialers. Utility autodialer uses fall under many overlapping exemptions proposed by the FCC. In order to clearly demarcate which autodialer calls are acceptable, the FCC should create as many outright exemptions as are discernable, including a specific exemption for utilities. As a general matter, UTC supports exemptions for non-commercial calls, commercial calls which do not affect privacy interests and


which do not contain an advertisement, calls by non-profit organizations, calls made where there is a pre-existing relationship and calls for debt collection.

WHEREFORE, the premises considered, the Utilities Telecommunications Council respectfully requests the FCC act in accordance with the comments set forth herein.

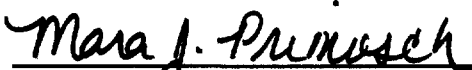
Respectfully submitted,

UTILITIES TELECOMMUNICATIONS  
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Dated: May 26, 1992